

## REMARKS

This is a full and timely response to the outstanding final Office Action mailed September 3, 2003 (Paper No. 10). Claims 5-6, 8-22, and 24-42 remain pending in the present application. Claims 5, 8, 16, 19, 22, 24, 27, 28, 32, 35, 38, 39, 40, and 42 are directly amended. Claims 7 and 23 are cancelled. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### I. Interview Summary

Applicants first wish to express their sincere appreciation for the time the Examiner spent with Applicants' attorney, Minh Nguyen, during a telephone discussion on October 8, 2003, regarding the final Office Action mailed on September 3, 2003. Applicants' attorney provided an annotated version of the claims for discussion purposes only. The discussion addressed the claims in the annotated version of the claims. It should be noted that the features discussed in the annotated version of the claims are now amended in the present claims. During that conversation, the Examiner indicated that it would be potentially beneficial for Applicants to make the amendments; however, the Examiner indicated that an additional search and examination would be needed if the claims were amended. Thus, Applicants respectfully request that Examiner carefully consider this response and the amendments.

### II. Status of the Application

Applicants appreciate the Examiner's withdrawal of the objections to the drawings, abstract and specification due to Applicants' amendments in Applicants' Response (Paper No. 9). Applicants further appreciate the Examiner's agreement to hold the objection to the specification regarding the incorporation of an improper appendix in abeyance until allowance of the instant application.

### III. Reply to Response to Argument

Applicants appreciate Examiner's response regarding claims 39, 40, and 42. Applicants have amended the claims and respectfully submit that the cited reference fails to teach, disclose

Because independent claim 40 is allowable over the cited art of record, dependent claim 41 is allowable as a matter of law for at least the reason that dependent claim 40 contains all features and elements of their respective independent base claim. *See, e.g., In re Fine*, supra. Accordingly, Applicants respectfully request that the rejection to dependent claim 41 be withdrawn for this reason, among others.

H. Claim 42

Claim 42, as amended, recites:

A system for use in formation of a contract, comprising:  
a template for assembling a bid package to be sent to  
contractors to facilitate the contractors in providing an offer for a  
particular job;  
*a data processor for communicating with contractors including  
copying, encrypting, sending and printing the bid package and for retrieving at  
least one previous bid made on the job; and  
a comparator for evaluating responses to the bid package  
based on the at least one previous bid.*

(Emphasis Added)

In rejecting claim 42, the Office Action admits that *Brown* does not expressly teach the use of a data processor for communicating with contractors including copying, encrypting, sending and printing the bid package. The Office Action instead takes Official Notice that it is old and well known in the art of bidding to copy, send, and print bid packages. The Office Action further takes Official Notice that it is old and well known in the art of crypt data in order to protect the confidentiality of the data. Based on these premises, the Examiner alleged that it would be obvious to one skilled in the art at the time of the Applicants' invention to incorporate with *Brown* the use of a data processor for communicating with contractors including copying, encrypting, sending, and printing the bid packages.

Applicants respectfully assert that "It is never appropriate to rely solely on common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d 1879, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* At 1385, 59 USPQ2d at 1697. Consequently, because *Inglesby* fails to disclose copying, encrypting,

sending, and printing the bid packages as recited in claim 42 and the Office Action solely relies on the Official Notice to reject claim 42, Applicants respectfully submit that the Official Notice is improper and that the rejection be withdrawn.

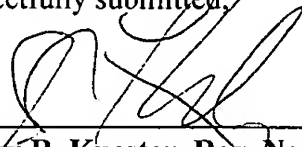
In addition, *Brown* discloses that the Integrated Work Activity Calendar Subsystem is designed to “automatically accept or reject bid requests, depending on the nature of the bid requests and also depending on the availability of time in a network member’s schedule” (Emphasis Added, Col. 8, lines 28-34). Accordingly, *Brown* fails to teach, disclose, or suggest at least “a data processor ... for retrieving at least one previous bid made on the job; and a comparator for evaluating responses to the bid package based on the at least one previous bid” (Emphasis Added), as recited in claim 42. Consequently, for this reason, among others, Applicants respectfully request that claim 42 be allowed and the rejection be withdrawn.

Further, Applicants respectfully traverses the Examiner’s rejection. In fact, *Brown* appears to suggest sending bid requests electronically to network members and accepting or rejecting bids automatically depending on the nature of the bid request (Col. 8, lines 28-34 of *Brown*). Applicants respectfully submit that *Brown* fails to teach, disclose or suggest at least the copying, encrypting, sending *and* printing the bid packages to facilitate the bidding process, as recited in claim 40. For this reason, among others, Applicants respectfully request that claim 42 be allowed and the rejection be withdrawn.

## CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 5-6, 8-22, and 24-42 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned at (770) 933-9500.

Respectfully submitted,



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